PART IV

Section I-B

CENTRAL ACTS AND ORDINANCES

LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

THE CUSTOMS, GOLD (CONTROL) AND CENTRAL EXCISES AND SALT (AMENDMENT) ACT, 1973

NOTIFICATION

No. LAW 46 LCA 73, Bangalore, dated 31st October 1973

The Governor of Mysore is pleased to order that The Customs, Gold (Control) and Central Excise and Salt (Amendment) Act, 1973 (36 of 1973) which has been published in the Gazette of India, Extraordinary Part II, Section 1, dated 3rd September 1973 be republished in the **Mysore Gazette** for general information.

H. SUBBA RAO,
Under Secretary to Government,
Department of Law and Parliamentary Affairs.

Assented to on 1st September 1973.

Act No. 36 of 1973.

THE CUSTOMS, GOLD (CONTROL) AND CENTRAL EXCISES AND SALT (AMENDMENT) ACT, 1973

An

ACT

further to amend the Customs Act, 1962, the Gold (Control) Act, 1968 and the Central Excises and Salt Act, 1944.

Be it enacted by Parliament in the Twenty-fourth Year of the Reublic of India as follows :-

CHAPTER I

Preliminary

1. Short title.—This Act may be called the Customs, Gold (Control) and Central Excises and Salt (Amendment) Act, 1973.

CHAPTER II

Amendments to the Customs Act, 1962

2. Amendment of section 111.—In section 111 of the Customs Act, 1962, (52 of 1962) (here after in this Chapter referred to as the Customs Act), in clause (m), for the words "any dutiable or prohibited goods which do not correspond in any material particular", the words "any goods which do not correspond in respect of value or in any other particular" shall be substituted.

3. Amendment of section 112.—In section 112 of the Customs Act, after clause (ii), the following clauses shall be inserted, namely:—

"(iii) in the case of goods in respect of which the value stated in the entry made under this

Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding five times the difference between the declared value thereof or more or one thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding five times the value of the goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii,) to a penalty not exceeding five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest".

4. Amendment of section 123.—In section 123 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—

(a) in a case where such seizure is made from the possession of any person,—

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized".

5. Amendment of section 135.—Section 135 of the Customs Act shall be re-numbered as sub-section (1) thereof, and

(i) in sub-section (1) as so re-numbered,—

(a) in clause (i), for the words "five years", the words "seven years" shall be substituted;

(b) in clause (ii), for the words "two years", the words "three years" shall be substituted;

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserteed, namely:—

"(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than six months.

(3) For the purposes of sub-section (1) and (2), the following shall not be considered as special and adequate

reasons for awarding a sentence of imprisonment for a term of less than six months, namely :—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused".

6. Insertion of new sections 135A and 135B.—After section 135 of the Customs Act, the following sections shall be inserted, namely :—

"135A. **Preparation.**—If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

135B. **Power of court to publish name, place of business, etc., of persons convicted under the Act.**—(1) Where any person is convicted under this Act for contra-

vention of any of the provisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court.".

7. Amendment of section 136.—In section 136 of the Customs Act, in sub-section (1), for the words "two years", the words "three years" shall be substituted.

8. Amendment of section 138.—In section 138 of the Customs Act, for the words, brackets and figures "under clause (i) of section 135", the words, brackets and figures "under clause (i) of sub-section (1) of section 135 or under sub-section (2) of that section" shall be substituted.

9. Insertion of new sections 138A and 138B.—After section 138 of the Customs Act, the following sections shall be inserted, namely:—

"138A. **Presumption of culpable mental state.**—(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

138B. **Relevancy of statements under certain circumstances.**—(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply, in relation to any proceeding under the Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court'.

10. Substitution of new section for section 139.—For section 139 of the Customs Act, the following section shall be substituted, namely:—

"139 **Presumption as to documents in certain cases.** Where any document—

(i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested that it was executed or attested by the person by whom it purports to have been so executed or attested.

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence ;

(c) in case falling under clause (i) also presume, unless the contray is proved, the truth of the contents of such document".

11. Insertion of new section 140A. In Chapter XVI of the Customs Act, after section 140 the following section shall be inserted, namely :—

"140A. **Application of section 562 of the code of Criminal Procedure, 1898, and of the Probation of Offe-**

nders Act, 1958.—(1) Nothing contained in section 562 of the Code of Criminal Procedure, 1893 (5 of 1898) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 135".

12. Amendment of section 156. In section 156 of the Customs Act, in sub-section (2), after clause (f), the following clause shall be added, namely :—

"(g) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules.".

CHAPTER III

Amendments to the Gold (Control) Act, 1968

13. Amendment of section 67. In section 67 of the Gold (Control) Act, 1968, (45 of 1968) [hereafter in this Chapter referred to as the Gold (Control) Act], for the words "where any document is produced by any person under this Act or has been seized thereunder from the custody or control of any person and such document is tendered by the prosecution in evidence against him", the words "Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him" shall be substituted.

14. Amendment of section 85. Section 85 of the Gold (Control) Act shall be re-numbered as sub-section (1) thereof, and

(i) in sub-section (1) as so re-numbered, for the portion beginning with the words "shall, without prejudice to any action" and ending with the words "which may be less than six months", the following shall be substituted, namely :—

"shall, without prejudice to any other action that may be taken under this Act, be punishable—

(a) if the offence is under clause (i), (ii), (iii), (iv) or (viii) [the offence under clause (viii) being a contravention of sub-section (3) of section 55] and the value of the gold involved therein exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for a term of less than six months.

(b) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.".

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely :

"(2) If any person convicted of an offence under this section, or under sub-section (2) of section 95, is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprsonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely :—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.".

15. Insertion of new section 96A.—After section 96 of the Gold (Control) Act, the following section shall be inserted, namely :—

"96A. **Certain offences to be non-cognisable.**— Notwithstanding anything contained in the Code of Criminal Procedure, 1898, (5 of 1898) an offence under section 85 or section 87 or section 88 or section 89 or sub-section (2) of section 95 shall be deemed to be non-cognisable within the meaning of that Code".

16. Amendment of section 98.—In section 98 of the Gold (Control) Act, for clause (ii) the following clause shall be substituted, namely :—

" (ii) every effence against this Act, other than an offence punishable under clause (a) of sub-section (1), or under sub-section (2), of section 85, may be tried summarily by a magistrate ".

17. Insertion of new sections 98A, 9jB, 98C, and 98D.—In Chapter XV of the Gold (Control) Act, after section 98, the following sections shall be inserted, namely:—

'98A. **Power of court to publish name, place of business, etc., of persons convicted under the Act.**— (1) Where any person is convicted under this Act for contravention of any of the porvisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expence of such person in such newspapers or such manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court

98B. **Presumption of culpable mental state.**—(1) In any prosecution for any offence under this Act which

requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be open to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and behalf in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

98C. **Relevancy of statements under certain circumstances.**—(1) A statement made and signed by a person before any Gold Control Officer of a gazetted rank during the course of any inquiry of proceeding under this Act shall be relevent, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the advers party, or whose personcce cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than proceeding before a court, as they apply in relation to a proceeding befeore a court.

98D. **Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.**—(1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898, (5 of 1898), or in the Probation of Offenders Act, 1958, (20 of 1958) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 85'.

18. Amendment of section 100.—In section 100 of the Gold (Control) Act, in sub-section (4), for the words " Nothing in this section shall apply to a petty transaction", the following shall be substituted, namely :—

"Nothing in this section shall apply to the acceptance, purchase or other receipt, by way of petty transactions, in the course of a day, of gold up to a quantity of one hundred grammes, by a licenced dealer or refiner or certfied goldsmiths, as the case may be ".

19. Amendment of section 114.—In section 114 of the Gold (Control) Act, in sub-section (2), after clause (j), the following clause shall be inserted, namely :—

" (jj) the publication subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules made thereunder.".

CHAPTER IV

Amendments to the Central Excises and Salt Act, 1944

20. Amendment of section 9.—Section 9 of the Central Exices and Salt Act, 1944 (1 of 1944) (hereafter in this Chapter referred to as the Central Excises and Salt Act), shall be re-numbered as sub-section (1) thereof, and—

(i) in sub-section (1) as so re-numbered,—

(a) after clause (b), the following clauses shall be inserted, namely:—

"(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;

(bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;"; and

(b) for the words "shall, for every such offence, be punishable with imprisonsment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.", the following shall be substituted, namely:—

"shall be punishable,—

(i) in the case of an offence relating to any excisable goods, the duty leviable thereon under this

Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both".

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) the age of the accused".

21. Insertion of new sections 9A, 9B, 9C, 9D and 9E.—After section 9 of the Central Excise and Salt Act, the following sections shall be inserted, namely:—

'9A. Certain offences to be non-cognisable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) offences under section 9 shall be deemed to be non-cognisable within the meaning of that Code.

9B. Power of Court to publish name, place of business, etc., of persons convicted under the Act.—(1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has without expired any appeal having been preferred, or such an appeal, having been preferred, has been disposed o

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

9C. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability

9D. Relevancy of statements under certain circumstances.—(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot

be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Cour

9E. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.—(1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898) or in the Probation of Offenders Act, 1958, (20 of 1958) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9;

22. Insertion of new section 34A.—After section 34 of the Central Excises and Salt Act, the following section shall be inserted, namely :—

"**34A. Confiscation or penalty not to interefere with other punishments.**—No confiscation made or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law".

23. Insertion of new section 36A.—In Chapter VI of the Central Excises and Salt Act, after section 36, the following section shall be inserted, namely :—

"**36A. Presumption as to documents in certain cases.**—Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence".

24. Amendment of section 37.—In section 37 of the Central Excises and Salt Act,—

(i) in sub-section (2), after clause (xx), the following clause shall be inserted, namely :—

"(xxi) provide for the publication, subject to such conditions as may be specified therein, of

names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or of any rule made thereunder.";

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

'(5) Notwithstanding anything contained in sub-section (3), the Central Government may make rules to provide for the imposition upon any person who acquires possession of or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.".

K. K. SUNDARAM,
Secretary to the Government of India.

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